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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,672	07/07/2003	Michael Slatkine	0-03-152	7328
7590	01/30/2006			
Kevin D. McCarthy Roach Brown McCarthy & Gruber, P.C. 1620 Liberty Building 420 Main Street Buffalo, NY 14202			EXAMINER RAHLL, JERRY T	
			ART UNIT 2874	PAPER NUMBER
DATE MAILED: 01/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/614,672	Applicant(s) SLATKINE, MICHAEL	
	Examiner Jerry T. Rahll	Art Unit 2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) 27-35 and 82-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-19, 21-26, 36-40, 42-56, 59-70, 73, 74 and 79, 81 is/are rejected. ^{and}
- 7) ☒ Claim(s) 6, 20, 41, 57, 58, 71, 72, 75-78 and 80 is/are objected to. ^{and}
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/15/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Please note that this action corrects the omission of elected Claims 25-26 from the office action mailed 15 December 2005.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 12/15/05 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

3. The abstract of the disclosure is objected to because it exceeds the maximum length. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7-19, 21-26, ~~36~~^{and} 40, 42-56, 59-70, 73-74 and ~~79~~^{and} 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0034012 to Santoro et al.

6. Santoro et al. describes a light source (162, 178) and means (160, 176) to cause divergent light at a distal end of the light source, where at a first position (170, 184) of the distal end relative to a target the energy density of a beam is substantially equal to the energy density of the light, and where at a second position (172, 186), the light emitted from the distal end has an

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energy density significantly less than the energy density at the light source (see Pages 12-13 and Figures 20-21). While the preamble of the claims describes the device and method for improving safety, these limitations only speak to intended use and are not given any patentable weight.

7. Further, Santoro et al. does not specifically describe the light source as a monochromatic source of the type presently claimed. However, such monochromatic light sources are well-known in the art for many uses. The motivation for using such a source with the diverging structure of Santoro et al. would be to allow for controllable illumination using such a source.

8. Further, Santoro et al. describes scattering the light (174, 188). Further, Santoro et al. describes a diffusing unit comprising a transparent diffusive transmitting element (166, 180) that is attached to the distal end of the monochromatic light source and scatters the light.

9. Further, Santoro et al. does not describe the radiance having the described values. However, it would have been obvious to one of ordinary skill in the art to scatter light to have the presently claimed radiance since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

10. Further, Santoro et al. does not describe the angle of divergent exit beam to the values described in the present claims. However, it would have been obvious to one of ordinary skill in the art to scatter light to have the presently claimed angles since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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11. Further, Santoro et al. describes the diffusive transmitting element as glass or plastic (see Paragraph 0187).

12. Further, Santoro et al. describes the clear transmitting element and the diffusive transmitting element as parallel and perpendicular to the longitudinal axis of the diffusing unit (see Figures 20-21).

13. Further, the claims only recite intended uses for the method and device. (see MPEP section 2114, “a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus”)

Allowable Subject Matter

14. Claims 6, 20, 41, 57-58, 71-72, 75-78 and 80 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 6 and 41 and describe the diffuser as axially displaceable.

16. Claims 20 and 57 describe a gap between the diffusive element and the clear element.

17. Claim 58 describes the diffusive element having a plurality of randomly distributed irregularities.

18. Claims 71-72 describe the attachment means as releasable.

19. Claims 75-77 describe a means to evacuate vapors or particles from the target.

20. Claims 20 and 78 describe a means for cooling skin.

21. Claim 80 describes a means for generating a visible flash.

22. This is subject matter not described or reasonably suggested by the prior art of record.

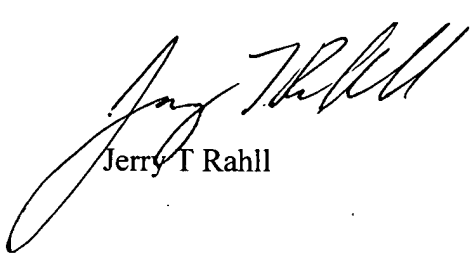
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry T. Rahll whose telephone number is (571) 272-2356. The examiner can normally be reached on M-Th (8:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jerry T Rahll



John D. Lee
Primary Examiner